

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Larry Neff Management and
Development, Inc.)

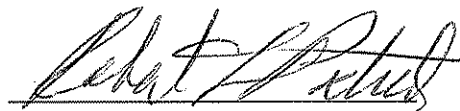
Respondent)
_____)

Docket No. TSCA-07-2007-0024

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 9 of the Consent Agreement and Final Order is authorized in this proceeding. Complainant shall immediately file the original page 9 upon receipt from Respondent, and the original shall replace the facsimile page 9.

Dated: March 28, 2008



Robert L. Patrick
Regional Judicial Officer

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

The Complaint proposed a civil penalty of \$11,000 for these violations. Complainant and Respondent entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of such negotiations, and fully and finally resolves the allegations contained in the Complaint.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint, and neither admits nor denies the specific factual allegations of the Complaint.

2. Respondent waives its right to contest the allegations of the Complaint and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of \$1,925 to be paid within thirty (30) days of the effective date of the Final Order.

6. In settlement of this matter, Respondent agrees to complete two Supplemental Environmental Projects (SEPs), which the parties agree are intended to secure significant environmental and/or public health benefits. Respondent's penalty has been mitigated by \$5,775 for the following SEPs:

(i) "Lead-Based Paint Inspection" of 518 North College Street in Neosho, Missouri.

Respondent shall have the property inspected by an entity that is certified and licensed to perform lead-based paint activities, as that term is defined by 40 C.F.R. Part 745. The inspection shall be performed in accordance with all applicable local, state and federal

laws and regulations. Respondent shall provide EPA with a copy of the inspection report; and

(ii) "Interim Control" activities at 518 North College Street in Neosho, Missouri. All activities shall be performed in accordance with Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference), the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (the "Guidelines") and all applicable local, state and federal laws and regulations. The following activities are proposed and described in detail in Attachment A:

(a) Stabilizing, priming and repainting all window casings, window sills, door jambs, woodwork, baseboard, stairs, and interior ceilings and walls, identified as containing lead-based paint in the "Lead-Based Paint Inspection" report referred to in Paragraph 6(i) above, along with cleaning and decontamination of high dust accumulation areas;

(b) Clearance examination of areas impacted by the activities specified in Paragraph 6(ii)(a) by a licensed and certified inspector or risk assessor. Cleaning and reevaluation shall be conducted as required and a Clearance Examination Report shall be generated; and

(c) Annual Visual Monitoring of the areas specified in Paragraph 6(ii)(a), and institution of corrective measures as necessary.

7. Within thirty (30) days of the effective date of the Final Order, Respondent will provide EPA with a copy of the letter sent to the Missouri Department of Health and Senior Services (MDHSS) informing the MDHSS of its intent to perform the "Interim Control" SEP and

requesting procedural information pertaining to performance of the SEP.

8. The total expenditure for the "Lead-Based Paint Inspection" SEP shall be not less than \$2,100.

9. The total expenditure for Paragraphs 6(ii)(a) and (b) of the "Interim Control" SEP shall not be less than \$10,500 and shall be completed no later than 90 days following the effective date of this Consent Agreement and Final Order.

10. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall submit the invoice(s) associated with the "Lead-Based Paint Inspection" SEP and proof of payment.

11. Within thirty (30) days of completion of the activities required by Paragraphs 6(ii)(a) and (b) of the "Interim Control" SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The "Interim Control" SEP Completion Report shall contain the following:

- (i) A detailed description of the "Interim Control" SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) The Clearance Examination report;
- (iv) A statement that the Annual Visual Inspection will be performed on an annual basis and that corrective measures will be implemented; and
- (v) The following certification signed by an officer of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my

inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

(vi) The report shall be directed to the following:

As to EPA:

Crystal McIntyre, WWPD/TOPE
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

As to the State:

Brandon Rekus, Lead Licensing Program Manager
Missouri Department of Health and Senior Services
930 Wildwood, P.O. Box 570
Jefferson City, MO 65102

12. Respondent shall be liable for stipulated penalties for the "Lead-Based Paint Inspection" SEP in the following instances:

- (i) If the Respondent fails to timely submit the documents required by Paragraph 10 of this Order, Respondent shall pay a stipulated penalty of \$1,400.
- (ii) If the "Lead-Based Paint Inspection" SEP is completed to the satisfaction of EPA but Respondent's actual expenditures are less than 90 percent of the amount of money required to be expended on the "Lead-Based Paint Inspection" SEP, Respondent shall pay a stipulated penalty of \$160.
- (iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

13. Respondent shall be liable for stipulated penalties for the "Interim Control" SEP in the following instances:

- (i) If the "Interim Control" SEP is not timely completed to the satisfaction of EPA in accordance with the terms of this Order, Respondent shall pay a stipulated penalty of \$4,375.
- (ii) If the "Interim Control" SEP is completed to the satisfaction of EPA but Respondent's actual expenditures are less than 90 percent of the amount of money required to be expended on the "Interim Control" SEP, Respondent shall pay a stipulated penalty of \$500.
- (iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand from Complainant.

14. Respondent certifies that it is not required to perform or develop the "Lead-Based Paint Inspection" SEP and/or the "Interim Control" SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the "Lead-Based Paint Inspection" SEP and/or the "Interim Control" SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the "Lead-Based Paint Inspection" SEP and/or the "Interim Control" SEP.

15. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the "Lead-Based Paint Inspection" SEP and/or the "Interim Control" SEP that are analogous to a civil penalty.

16. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the "Lead-Based Paint Inspection" SEP and/or the "Interim Control" SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

17. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above or any portion of a stipulated penalty as stated in Paragraphs 12 and 13 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of \$1,925 within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by Certified or Cashier's Check or Wire Transfer.

The check should be made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Jonathan Meyer, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Projects in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalties assessed as specified in the Consent Agreement.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

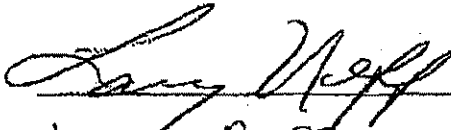
Larry Neff Management and Development, Inc. CAFO
Docket No. #TSCA-07-2007-0024 Page 9 of 11

RESPONDENT
LARRY NEFF MANAGEMENT AND DEVELOPMENT, INC.

Date:

3-27-08

By:



LARRY Neff

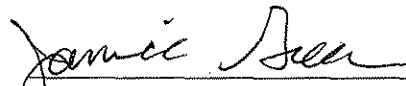
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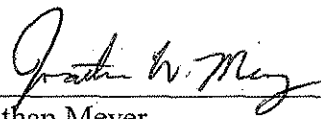
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/28/08

By: 
Jamie Green, Branch Chief
Toxics and Pesticides Branch
Water, Wetlands and Pesticides Division

Date: 3-28-08

By: 
Jonathan Meyer
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date:

Mar. 28, 2008



ROBERT L. PATRICK

Regional Judicial Officer

U.S. Environmental Protection Agency, Region 7

PROPOSED WORK PLAN FOR THE LARRY NEFF MANAGEMENT & DEVELOPMENT, INC. SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent, Larry Neff Management & Development, Inc. ("Neff"), proposes to perform the following interim controls project as part of the Settlement Agreement between Respondent and the United States Environmental Protection Agency ("EPA") with respect to the matter docketed as No. TSCA-07-2007-0024. The interim controls projects will be subject to clearance sampling performed by Mid-America Environmental Solutions, a contractor certified by the State of Missouri to inspect and provide risk assessment with respect to lead-based paint.

Projects To Be Completed

Respondent proposes to address those interior surfaces at 518 N. College Street, Neosho, Missouri, identified as having been detected to contain lead-based paint in the Lead-Based Paint Survey Report performed by Mid-America Environmental Solutions on November 13, 2007. Respondent has obtained a preliminary bid on the interim controls for 518 N. College Street, Neosho, Missouri, which generally consists of stabilizing, priming, and repainting all window casings, window sills, door jambs, woodwork, baseboard, stairs, and interior ceilings and walls, along with cleaning and decontamination of high dust accumulation areas, at a cost of at least \$9,000. Preliminary Bid attached as Exhibit 1. In addition, Respondent will install stairwell treads on stairs in the front entry to prevent friction wear on the stairs.

Following completion of the interim controls projects set forth above, Respondent will contract with Mid-America Environmental Solutions, a contractor certified and licensed by the State of Missouri with respect to risk assessment of lead-based paint, to perform clearance sampling consisting generally of dust wipe sampling and analysis, as set forth in Mid-America Environmental Solutions Preliminary Bid, attached as Exhibit 2, at a cost of \$1,500. The clearance sampling results will be reported to Respondent, with copies and notification provided to the State compliance contact or county health department.

Respondent anticipates entering into a binding contract with Robert Clark Painting for the interim controls project as described above within thirty (30) days of the entry of the Consent Agreement and Final Order, and anticipates completing the lead hazard interim controls projects within ninety (90) days of the entry of the Consent Agreement and Final Order.

Respondent anticipates entering into a binding contract with Mid-America Environmental Solutions to provide clearance sampling within thirty (30) days of the entry of the Consent Agreement and Final Order, and anticipates completing the clearance sampling within ninety (90) days of the Consent Agreement and Final Order.

Maintenance and Monitoring

Respondent or Respondent's agents will conduct visual inspections of the premises on at least an annual basis, at the time of turnover of rental of any unit, or upon notification of defects from occupants. Respondent or Respondent's agents will maintain a log of such inspections including any repairs or maintenance to the units at the offices of Neff. At the time of turnover of any such unit, Respondent or Respondent's agents will perform maintenance including HEPA vacuuming, wet mopping, and cleaning of floors, window troughs, and interior window sills. Respondent will provide tenants with required notice of lead-based paint hazards and presence. Respondent will maintain documentation of all such notices at the offices of Neff. In the event it is determined at the time of the clearance sampling that re-evaluation is necessary, Respondent will comply with such re-evaluation schedule as is established by the certified and licensed contractor based on clearance sampling.

Respondent will not prepare or maintain a Lead Hazard Control Plan as the building in question has less than ten (10) units.

Legal Guidelines for SEP Projects

The interim controls projects described above all fall within the EPA's SEP policy guidance and the legal guidelines for SEP projects. These projects are not inconsistent with any provision of the underlying statutes. These projects directly advance the goals of the Residential Lead-Based Paint Hazard Reduction Act of 1992 by detecting and eliminating lead paint from target housing and accordingly eliminating the potential health hazards from such units. These projects will reduce the likelihood of future similar violation (alleged non-disclosure). In addition, the projects will reduce the potential for adverse impact to public health. The interim controls projects are also within the immediate geographic area of the alleged violations.

The funding of these projects is in no way controlled by EPA nor will EPA gain any resources as a result of such projects. Respondent will not use any federal funds or grants to perform these projects.

Supplement Environmental Projects are common settlement tools used in alleged violations of the Lead-Based Paint Disclosure Rule. EPA has expressed a preference for abatement SEP projects which eliminate the risk at a facility, as opposed to environmental assessment or audit SEP projects which may be interpreted as identifying but not eliminating alleged risks.

Lead hazard interim controls projects fall within the third type of SEP described in SEP guidance, for the reason that such projects result "in a decrease of the amount and/or toxicity of [a] hazardous substance" that has been previously generated or released into the environment. Lead hazard interim controls in the target housing units "employs recycling, treatment, containment, or disposal techniques: which reduces the potential for

lead-based paint health related effects and other harmful consequences of lead in the environment.

To the extent that the lead hazard interim controls projects do not fit within one of the seven specific categories of SEP projects, these projects would fit within the "catch-all" eighth category described in the SEP policy to include "projects determined by the case team to have environmental merit which do not fit within at least one of the seven categories above, but are otherwise fully consistent with all other provisions of the SEP policy.

Conclusion

Respondent proposes to perform these lead hazard interim controls projects at 518 N. College in Neosho, Missouri. The interim controls projects should be completed on or before ninety (90) days from the entry of the Consent Agreement and Final Order. Total costs for the interim controls projects, combined with the previous assessment cost of \$2,100 for the Lead-Based Paint Survey conducted on November 13, 2007, will equal approximately \$12,600.

ROBERT CLARK
Painting

.....

13451 Mallard Drive
Neosho, MO 64850
(417) 483-0717 or (417) 451-3240

March 20, 2008

Larry Neff
PO Box 525
Neosho, MO 64850

Stabilize, including scraping and vacuuming where necessary, prime and repaint all woodwork, including window sills and sashes, doorjamb, baseboards and molding, and interior wall in all 5 units and common areas at 518 N. College Street, Neosho, Missouri. Paint one coat of primer and two coats of "Navajo White" paint to all woodwork and windows.

Materials used will be good or best quality oil or latex-based paint depending on surface to be painted.

Total price \$9,000.00.

Thank you.

R. M. Clark

MiD-America

Environmental Solutions

P.O. Box 737
Carthage, MO 64836

Ph: 417-358-3599
Fax: 417-358-8332

March 21, 2008

Ms. Teresa A. Woody
The Woody Law Firm
1044 Main Street, Suite 500
Kansas City, MO 64105
Fax: 816-221-8449

RE: Clearance Sample Pricing for College Street Apartments, Neosho, MO

Dear Ms. Woody,

Thank you for contacting MiD-America Environmental Solutions (MAES) for pricing on providing clearance sampling for the abatement on the College Street Apartments in Neosho, MO. Our pricing for the clearance sampling will be as follows.

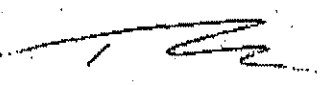
Project initiation fee - \$75.00
Field Inspector - \$75.00/hour, est. 8 hrs = \$600.00
Lead Analysis of Dust Wipes, 24 hour TAT - \$20.00/sample, est. 30 samples = \$600.00
Clearance Report - \$200.00
Travel - 40 miles round trip @ \$0.65/mile = \$26.00

Estimate price based on 6 dust wipe samples per unit, 5 units, - \$1,501.00

Pricing assumes clearance sampling is done in one mobilization. Actual pricing will be based on time and materials.

If you have any questions or wish to schedule, please contact myself or Dave Greathouse of my office at 417-358-3599.

God Bless,



Dominic Whitley
Operations Manager

IN THE MATTER OF Larry Neff Management & Development, Inc., Respondent
Docket No. TSCA-07-2007-0024

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order were sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jonathan W. Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Teresa A. Woody, Esquire
The Woody Law Firm, PC
1044 Main Street, Suite 500
Kansas City, Missouri 64105

and


Copy by First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

and

The Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated: 3/28/08


Kathy Robinson
Hearing Clerk, Region 7